

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

FRANCES SPURLOCK AND JEFFREY )  
SPURLOCK, *et al.*, )  
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 )  
Plaintiffs, )  
 )  
 )  
v. ) No. 3:09-cv-00756  
 )  
DAVID FOX, *et al.*, ) Judge Nixon  
 )  
 )  
Defendants. )

## **PROPOSED PRE-HEARING ORDER**

The parties submit the following Proposed Pre-Hearing Order:

## I. Statement of the Basis for Jurisdiction

Plaintiffs filed suit under 42 U.S.C. § 1983 alleging violations of the Fourteenth Amendment to the U.S. Constitution.

## II. Statement of the Issues

Plaintiffs allege that the Metropolitan Board of Education's recent rezoning plan, as applied to the plaintiffs, violates the Equal Protection and Due Process Clauses. Specifically, plaintiffs raise the following legal and factual issues:

1. Whether the rezoning plan, as applied, is a racially identifiable plan in violation of *PICS v. Seattle* (1907)?
2. Whether the rezoning plan is motivated by any racial considerations?
3. Whether the rezoning plan, as applied, violates rights guaranteed by the State laws and State Constitution regarding rights to education?

Defendants submit that for purposes of this preliminary injunction hearing the courts analysis should be limited to the following specific issues:

1. Whether Plaintiff has a likelihood of establishing that the Board of Education's recent rezoning plan, as applied to Plaintiffs Spurlock or Lewis, violates the Equal Protection Clause by preventing them from attending Bellevue Middle School?
2. Whether Plaintiff has a likelihood of establishing that the defendants violated the Equal Protection Clause by failing to provide a personal copy of each textbook on the first day of school to each student at John Early Middle School?
3. Whether Plaintiff has a likelihood of establishing that the defendants violated the Equal Protection Clause by failing to provide a personal copy of each textbook on the first day of school to each student at all Metropolitan Nashville public schools?
4. Whether Plaintiffs Spurlock or Lewis will be irreparably harmed if the Court does not order the defendants to transfer them to Bellevue Middle School?
5. Whether the defendants will be harmed if the Court orders them to transfer Plaintiff Spurlock or Lewis to Bellevue Middle School?
6. Whether it is in the public's interest for Plaintiffs Spurlock or Lewis to be transferred to Bellevue Middle School?
7. Whether the defendants will be harmed if the Court orders them to provide a personal copy of every textbook to all MNPS students, including Plaintiff Spurlock and Plaintiff Lewis, by a date certain?
8. Whether it is in the public's interest for the Court to order the defendants to provide a personal copy of every textbook to all MNPS students, including Plaintiff Spurlock and Plaintiff Lewis, by a date certain?

### **III. Witness and Exhibit List**

No later than 12:00 p.m. on Monday, September 14, 2009, the parties must deliver to opposing counsel, via electronic mail, facsimile, or hand-delivery, a list of witnesses that they intend to call and exhibits that they may or intend to introduce during the preliminary injunction hearing.

#### **IV. Evidentiary Issues**

Defendants have filed two motions to strike challenging the admissibility of a number of alleged statements. Defendants anticipate that the issues raised in its motions in to strike will also be raised during the preliminary injunction hearing.

#### **V. Estimate of Anticipated Length of Hearing**

The parties anticipate that the preliminary injunction hearing in this matter will take 5 to 7 days.

THE DEPARTMENT OF LAW OF THE  
METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY  
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**Certificate of Service**

I hereby certify that a copy of the foregoing has been sent via the CM/ECF electronic filing system, on this 10<sup>th</sup> day of September, 2009 to:

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s/ Kevin C. Klein  
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